



DEPARTMENT OF THE NAVY
NAVAL SEA SYSTEMS COMMAND
WASHINGTON, D C. 20362

IN REPLY REFER TO

CONTRACT N00024-77-C-0202

FOR THE DONATION OF

THE SULLIVANS (ex DD 537)

THIS CONTRACT, entered into this 1st day of June 1977 by and between the UNITED STATES OF AMERICA (hereinafter called the "Government"), represented by the Department of the Navy, and the City of Buffalo, New York (hereinafter referred to as the "DONEE"), represented by the Buffalo Urban Renewal Agency.

WITNESSETH:

WHEREAS, the Act of August 10, 1956 (P.L. 1028, 84th Congress), 10 U.S.C. 7308, authorizes the Secretary of the Navy to transfer by gift or otherwise, on terms prescribed by him, any obsolete vessel of the Navy to any State, municipal corporation of the United States, or any corporation or association whose Charter denies it the right to operate for profit; and

WHEREAS, by an Act of the New York State Legislature, Section 639 of Article 15-B of the General Municipal Law (Laws 1966, Chapter 106, Sec. 1) the Buffalo Urban Renewal Agency was created as a Corporate Governmental Agency and pursuant to Sec. 554 of the General Municipal Law has the power to acquire historic vessels as part of the City's maritime museum.

WHEREAS, the DONEE has applied for donation of the obsolete destroyer ex THE SULLIVANS (ex DD 537) (hereinafter called the "Vessel") and has indicated its intention to preserve and exhibit the Vessel; and

WHEREAS, the DONEE agrees to and undertakes the obligation to make and keep the Vessel safe and presentable for public exhibition and inspection, at no expense to the Government; and

WHEREAS, pursuant to 10 U.S.C. 7308, notice of the proposed transfer has been duly sent to the Congress, sixty calendar days of continuous session have been expired since then, and no resolution has been passed by the Congress stating in substance that it does not favor the proposed transfer.

NOW, THEREFORE, the Government agrees to transfer the Vessel to the DONEE and the DONEE agrees to accept the Vessel subject to the following terms and conditions:

1. The Government shall, subject to the provisions of paragraph 5, (i) deliver the vessel to the DONEE at the Inactive Ship Maintenance and Storage Facility, Philadelphia, Pennsylvania on an "as is, where is" basis and without warranty of any kind, and (ii) notify the DONEE of the delivery date sufficiently in advance thereof to enable the DONEE to make necessary arrangements for acceptance of delivery.
2. The DONEE shall:
 - (a) Accept the Vessel upon delivery by the Department of the Navy.
 - (b) Not activate or permit to be activated any system aboard the Vessel for the purpose of navigation or movement of the Vessel under its own power.
 - (c) Establish the Vessel, on a non-profit basis, as a public memorial/museum only and exhibit at a suitable site in the harbor of the City of Buffalo, New York, and maintain the Vessel in such a manner that it (i) will not cast discredit upon the Navy or upon the proud tradition of this historic Vessel, and (ii) will not allow the Vessel to become a menace to navigation, public health or safety.
 - (d) Maintain the Vessel in condition, satisfactory to the Department of the Navy. To that end the DONEE shall install not later than 30 July 1978, a permanent based mooring arrangement acceptable to the Navy. Pending completion of the permanent based mooring arrangement, temporary mooring of the Vessel shall be in a manner and at a site acceptable to the Navy. The maintenance obligations assumed by the DONEE shall include but shall not be limited to (i) the performance of all necessary painting and cleaning of exterior surfaces and interior compartments and passageways open to the public, (ii) the provision and maintenance in all public and private spaces of such handrails, warning signs, fire protection, lighting and ventilation systems and other safety devices as are necessary to insure the safety of the visiting public and of maintenance personnel aboard the Vessel, (iii) the assurance of the watertight integrity of the hull while the Vessel is afloat, (iv) the provision and maintenance of safe and efficient means of access and egress, (v) the provision and maintenance of suitable sanitary facilities for visitors, and (vi) such other safety and maintenance work as the Government may determine to be reasonably necessary, all the obligations hereunder shall be performed by the DONEE at its own expense and without reimbursement or contribution by the Government. All work performed hereunder shall be subject to the approval of the Commandant Third Naval District, Fourth Naval District Headquarters, Philadelphia, Pennsylvania 19112;

- (e) Procure and maintain, at its own expense without reimbursement or contribution by the Government, from and after the delivery of the Vessel, Broad Form Tower's Liability insurance including Tower's negligent damage to the Vessel during any tow, and Marine Hull and Protection and Indemnity liabilities insurance all in an amount not less than \$150,000 to cover the Vessel so long as the Vessel is waterborne. Upon completion of the permanent mooring arrangement the DONEE may substitute for insurance not less than \$150,000 of Fire and Extended Coverage insurance including risks of vandalism and malicious mischief and third party bodily injury liability insurance in an amount not less than \$300,000 per occurrence. Such insurance shall at all times protect the United States Government its agents or employees, from claims resulting or alleged to have arisen from fault, negligence, wrongful act or omission of the Government, its agents or instrumentalities, or their agents or employees in berthing, preparation for use, repairing or any other use, and shall, as to form and insurers, be subject to the approval of the Insurance Section (MAT 024N), Naval Material Command, Department of the Navy, Washington, D. C. 20360.
- (f) Present evidence satisfactory to the Government that, prior to the delivery of the Vessel, the DONEE has the financial means necessary to assure accomplishment of all the obligations hereunder.
- (g) Prohibit members of the general public from visiting aboard the Vessel prior to the accomplishment of all work necessary to make the Vessel safe and presentable for public inspection, except as may be authorized by the Navy Department.
- (h) Not transfer or otherwise dispose of the Vessel or any part thereof or any interest therein without the prior consent of the Secretary of the Navy or his duly authorized representative.
- (i) Indemnify and hold harmless the United States Government, its agents, or employees, against all suits, actions, claims, costs, fees and demands, (including without limitation suits, actions, claims, costs, fees and demands for death, personal injury or property damage) to which the Government, its agents or instrumentalities, or their agents or employees, may be subject by reason of damage or injury (including death) to the property or person of anyone resulting or alleged to have arisen or resulted from the fault, negligence, wrongful act or omission of the Government, its agents or instrumentalities, or their agents or employees, in the berthing, preparation for use, repairing, restoration or any other use of the Vessel originating after delivery of the Vessel to the DONEE.
- (j) Comply with all Federal, State and local laws and regulations in being or that may be hereinafter enacted or issued and relating to protection of the environment.

3. Non-Discrimination

- (a) The DONEE acknowledges that it has executed and furnished to the Government representative of this Contract, Navy Form NAVSO 5350/1 (11-71) "Assurance of compliance with the Department of Defense Directive under Title VI of the Civil Rights Act of 1964," and that it has read the explanation of the Department of Defense accompanying said Navy form; that all sanctions imposed and actions taken as a result of non-compliance therewith shall be in accordance with DOD Directive 5500.11, dated December 28, 1968, "Non-Discrimination in Federally Assisted Programs."
4. In the event that the Vessel is lost or destroyed prior to the time of transfer, by fire, shipwreck, act of Providence or of a foreign power by any other means whatsoever, whether by negligence on the part of the Government, or not, this Agreement shall become void and of no effect.
5. Upon delivery to and acceptance by the DONEE, title to the Vessel shall vest in the DONEE and title shall remain in the DONEE until transferred under article 2 (h) or Article 9 of this contract.
6. The Government shall not be liable to the DONEE in any manner whatsoever for damages or otherwise on account of delayed delivery or non-delivery of the Vessel or for any other reason.
7. No expense shall result to the Government as a consequence of the transfer of the Vessel to the DONEE or as a consequence of the terms and conditions prescribed hereunder.
8. Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the Commander, Naval Sea Systems Command, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the DONEE. The decision of the Commander, Naval Sea Systems Command shall be final and conclusive unless, within 30 days from the date of the receipt of such copy, the DONEE mails or otherwise furnishes to the Commander, Naval Sea Systems Command a written appeal addressed to the Secretary. The decision of the Secretary or his duly authorized representative for the determination of such appeals

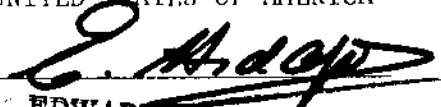
shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any proceeding under this clause, the DONEE shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the DONEE shall proceed diligently with the performance of the contract and in accordance with the decision of the Commander, Naval Sea Systems Command.

9. The Government may, during a national emergency, request the DONEE to return the Vessel and the DONEE shall, if and when requested to do so, return the Vessel to the Government. In the event the DONEE, or their assigns, shall fail to perform the obligations assumed under this Contract, the Secretary of the Navy or his duly authorized representative may terminate this Contract, provided that written notice to terminate, specifying the particulars wherein it is claimed that this Contract has been violated, is transmitted, by registered mail, to the DONEE. The DONEE shall have ninety (90) days from receipt of the above-mentioned written notice to cure the violations or deficiencies set forth in said notice. If, at the end of such time, it appears to the Secretary of the Navy, or his duly authorized representative, that the same have not been cured, then the Contract shall be deemed to be terminated, in which event the DONEE shall forfeit to the Government any and all rights it may have in the Vessel, including any improvements made to the Vessel by the DONEE as the Secretary of the Navy or his duly authorized representative may decide, and shall transfer title to the Government if the Secretary of the Navy or his duly authorized representative so directs.
10. The term "Government" as represented by the Department of the Navy means, the Secretary, Under Secretary or Assistant Secretary of the Navy, the Commander, Naval Sea Systems Command, and any other duly authorized representative, acting within the limits of his authority, that the aforesaid designated officials may appoint.

IN WITNESS WHEREOF, the parties hereto have duly executed this Contract as of the date first above written.

THE UNITED STATES OF AMERICA

By


EDWARD HIDALGO
Assistant Secretary of the Navy
(Manpower, Reserve Affairs & Logistics)

CITY OF BUFFALO, NEW YORK

By


MAYOR

I, Daniel J. Walkowiak certify that I am the Counsel
(City official i.e.,
_____ of the City of Buffalo; that Stanley M. Makowski
Mayor, Counsel, etc.) who signed the above contract on behalf of the
City of Buffalo was then Mayor of the City and
that said contract was duly signed for and in behalf of the city of
Buffalo, New York, all by authority duly given.

(SEAL)

Daniel J. Walkowiak